

lines is fundamentally misconceived, and is not the way to bring about the improvements which were under the old regime undoubtedly possible.

The attempt to restructure research in the humanities along production lines provides a particularly striking instance of the inappropriate application of the market model to social life. But while the contradictions involved in the attempt to apply market principles to knowledge are particularly stark, they merely prefigure contradictions at the heart of the market model itself. Society at large cannot be pressed into the market mould, but conforms in its essence to the principles of the gift economy. As Kropotkin pointed out last century, society is premised on trust, good will and mutual aid, rather than instrumentalism and contract. We all receive far more from society than we can possibly give, but in return we generally offer far more than we are contractually obliged to give. Our society has remained viable despite the encroachments of market thinking into every sphere of life only because certain institutions, such as the family, the Church and the universities, have to some extent resisted the market, and continued to lay the foundation of values which the market parasitises. Instead of attempting to convert these institutions to the market mould, we should, in my view, be seeking to reverse the creep of instrumentalism and contractarianism, and expanding the sphere of gift relations.

The market is inappropriate as a model not only for social and intellectual life, but even ultimately for transactions in the material sphere. For while the attempt to convert ideas into products is essentially incoherent, the attempt to commodify the natural world is also ultimately fraught with contradictions. The very idea of private property presupposes the existence and availability of a common pool of natural resources, such as air, water, soil, nitrogen and sunlight, just as the idea of research presupposes the existence of a common pool of ideas. Indeed, life itself conforms to the principles of the gift economy, and the current global environmental crisis testifies to the self-defeatingness of attempting to convert gifts into products. Organisms receive life gratuitously, and others give their lives to sustain them. Every organism returns its waste and eventually its body to the cycle: the gift of life must be passed on. The market system attempts to rob the cycle, to arrest the gift and siphon it off as profit or capital that can be kept and accumulated, not given back. But this contempt for the gift — whether it be the gift of knowledge or the gift of life — ultimately backfires, for it results in the collapse of the cycle, the demise of the goose that freely gave the eggs that were initially abundant and available to all.

These arguments against the market model are not meant to imply that the market as a

system of exchange does not serve a legitimate economic function. They are rather meant to challenge the assumption that social life as a whole, and even economics in its wider sense, can be exclusively modelled on the market. The suggestion is that, socially, intellectually and even biologically, gift principles are more fundamental than market principles, and therefore must be respected in our institutions. Indeed, I would see the defence of knowledge-as-an-end-in-itself as but a part of a wider need to reinstate the values of a gift economy at the heart of our collective life.

Notes

1. I would like to thank Jeff Malpas for his comments on an earlier draft of this paper.
2. Huppauf (1989) provides an historical treatment of the emergence of the 'modern university'.
3. I am indebted to Jim Cheney (1987) for first drawing my attention to the rich implications of the notion of a gift economy.
4. This is part of the traditional 'culture-based defence', which originated in the 19th century, and which is described by Ian Hunter (1989) as one of the two standard defences of the humanities. For a particularly eloquent statement of this kind of defence, see Bernard Williams (1987). The second kind of defence that Hunter sees as standard appeals to the role of the humanities in cultivating critical reasoning about society.
5. I am borrowing and adapting David Bohm's usage here; see *Wholeness and the Implicate Order*, London, Ark, 1983.
6. This is perhaps the most commonly cited desideratum of those engaged in research in the humanities. Huppauf (1989) includes an insightful discussion of time.

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References

- Aitkin, Don (1989), 'Forward the humanities!', *Meanjin*, Number 4/1989.
- Bohm, David (1983), *Wholeness and the implicate order*, London, Ark.
- Brett, Judith (1988), 'Uphill battle for the humanities', *Australian Society*, February.
- Cheney, Jim (1987), 'Eco-feminism and deep ecology', *Environmental ethics*, Volume 9, Summer.
- Coady, C.A.J. (1989), 'The justification of philosophy', in A.M. Gibbs (Ed.), *The relevance of the humanities*, Occasional Paper Number 8, Australian Academy of the Humanities, Canberra.
- Hunter, Ian (1989), 'Accounting for the Humanities', *Meanjin*, Number 3/1989.
- Huppauf, Bernd (1989), 'Reforming research and higher education — the example of the Federal Republic of Germany', *The Australian Universities' Review*, Vol. 32, No. 2.
- Hyde, Lewis (1983), *The Gift: imagination and the erotic life of property*, New York, Random House.
- Knight, Stephen (1989a), 'Searching for research', *Meanjin*, 3/1989.
- Knight, Stephen (1989b), 'Reply' to Don Aitkin, *Meanjin*, 4/1989.
- Mauss, Marcel (1970), *The gift, forms and functions of exchange in archaic societies*, Cohen and West.
- Williams, Bernard (1987), 'What hope for the humanities?', *Educational review*, Vol. 39.

The Academic Freedom Charter Experience

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In October 1989 Minister for Employment, Education and Training John Dawkins announced his intention to recommend to Cabinet a charter of institutional autonomy and academic freedom.

The purpose of the Charter was to legislate to give expression to the principle that:

institutions should be free from government interference in relation to:

- course content;
- methods of assessment;
- the conduct of research;
- the appointment of staff; and
- the free expression of views and opinions' (Dawkins, 1989b)

The context in which Dawkins announced his intentions was not a passionate defence of intellectual liberty, nor even a pragmatic account of the preservation of diversity in the nation's universities. Rather, it was an attempt to close off an avenue of criticism of the Government. The outcome Dawkins sought from the charter was that 'no longer will managers be able to claim that directives from Canberra are intruding on their preserve. The "Canberra Alihi" will disappear'.

Dawkins' speech announcing the academic freedom charter followed a major speech in which he roundly criticised university management in an attempt to direct academics' concerns about changes in higher education away from the Government and Minister and towards Vice-Chancellors. Dawkins concluded:

My belief in the commitment to management as an essential part of institutional autonomy and for the future prospects and progress of the system should not be in doubt. What is in doubt is whether management is yet delivering on behalf of the academic community within your institutions. (Dawkins, 1989a)

Origins of the charter proposal

The association between autonomy, management flexibility and academic freedom had been established in the Government's Higher Education policy discussion paper (the 'Green Paper') of December 1987. There are two references to academic freedom in that document, neither of them culled to engender confidence in a broad intellectual defence of the concept. The first places academic freedom in the context of greater management prerogative:

Improvements in management will also require a greater focus on strategic planning and evaluation of performance than has

previously been the case. The Government has a responsibility to coordinate the national system of higher education effectively so that scarce resources are applied to their best effect at the institutional level. This need not imply a conflict with the maintenance of academic freedom and institutional autonomy. Indeed, the Government is determined to create a more effective operating environment for institutions and to increase the scope for management prerogatives to be exercised. (Dawkins, 1987, p.47)

The scope of this exercise of management prerogative was fleshed out in the staffing chapter of the Green Paper which proposed sweeping changes in staffing arrangements, including reversionary tenure¹ staff assessment to ensure that inadequate performance not be protected, more short-term and part-time appointments, redundancy provisions, strengthened dismissal procedures, and 'more flexible salary packages'. Academics could be in no doubt that the Government's intention was to make their employment less secure.

The Green Paper's second reference to academic freedom was embedded in these staffing proposals, giving it the appearance of little more than a token rejoinder to the argument that security of employment is a prerequisite for academic freedom. The Green Paper acknowledged academic freedom as 'central to the effective operation of higher education institutions' and stated that the Government 'would be prepared to consider legislation providing safeguards in this area if appropriate means could be devised' (Dawkins, 1987, p.57). In the very next paragraph, however, there is the cautionary note that 'academic freedom should be no protection for inadequate performance or lack of commitment on the part of staff'.

There was little response to this proposal for legislation floated in the Green Paper. Most of the submissions responding to the Green Paper from institutions, staff associations and other interest groups ignored it entirely. The Australian Vice-Chancellors' Committee was hostile to the proposal calling it impractical. Not surprisingly, the AVCC embraced the expansion of managerial prerogative and deregulation of staffing, and accepted the Government's linkage of the two issues:

Academic freedom and freedom of speech in universities have been safeguarded in the past by the ability of universities to manage their own affairs... (AVCC, 1988, p.15).

Only the academic unions reacted sympa-

thetically to the legislation proposal, although without specific suggestions as to its content. The Federation of Australian University Staff Associations and Federated Council of Academics joint response to the Green Paper recommended that:

The Commonwealth should establish a working party, including Government, institutional and academic union representatives to examine and propose options for possible legislation to protect scholastic freedom. (FAUSA/FCA, 1988, p.22)

Given these responses it is hardly surprising that the Government's higher education policy statement (the White Paper) quietly shelved the notion of academic freedom legislation, noting the offer 'has met with little response' and that the matter would not be pursued 'unless either the employer or employee associations want to initiate further discussions' (Dawkins, 1988, p.107). The matter was not actively pursued by the academic unions, and the recommendation for a Commonwealth working party was not followed up.

The staffing changes in which the Green Paper's discussion of academic freedom had been embedded had also changed in character by the time of the White Paper. The Government had toned down many of its proposals, and dropped reversionary tenure altogether. Substantial negotiations had taken place between the academic staff unions and employers, with the occasional intervention of the Federal Government. These had resulted in an agreement under the Arbitration Commission's National Wage Case principles for the award of the 4% 'second-tier' wage increase and included a number of elements which were partial fulfilment of the Green Paper's objectives.

The interests of staff and of management

While legislation to protect academic freedom may have lacked vocal adherents in the period after the Green Paper came out, there was no lack of comment about the relationship between Government and higher education institutions. There was widespread concern that the Government's higher education policy represented an unwarranted intrusion into the affairs of higher education institutions.

This concern emanated from various sources including individual academics, staff associations (individually and collectively as FAUSA), and Vice-Chancellors individually and collectively. There were many different

aspects of the Government's proposals which gave rise to concern, including:

- the articulation of national priorities for research and the intention to direct funds to them at the expense of other areas;
- the reallocation of some recurrent funds to targeted, competitive research funding programs;
- the strengthening of management prerogative within institutions;
- reduction in size of governing bodies and a reduction of their representative role;
- new procedures for the appraisal of staff;
- the introduction of redundancy powers for institution management;
- the establishment of educational profiles, agreed between institutions and the Commonwealth and on which funding is based;
- requirements for greater consistency in data collection and the possibility of funding being determined on the basis of output data; and
- the abolition of the Commonwealth Tertiary Education Commission and its replacement by an advisory body with no executive capacity.

Not all these concerns were voiced by all of those objecting to the Government's proposed changes. Indeed, many are inconsistent with one another. But these differences were often not sufficiently appreciated by observers of the debate.

It is particularly important to make clear the difference between the interests of on the one hand the management of higher education institutions and on the other hand, those of staff. The clearest manifestation of this difference lay in the attitude to management prerogative and its connection to academic freedom. But there were other ways the difference became apparent, for example over the issue of staff appraisal - by and large supported by university managements as a powerful new personnel tool and, where it was supported by staff and their associations, only to the extent that it implied an expansion of opportunities for staff development.

The differences between staff and management perspectives were at times subordinated to a wider collective interest, for example in objections to the 'clawback' of operating grants to competitive allocation schemes on the grounds of the consequent damage to research infrastructure in universities. At other times the differences were to retreat into the background, for example in the discourse of collegiality as it applied to the restructuring of governing bodies or the inconsistency between national priorities and merit-based peer assessment of research proposals.

Many of the public comments made by various higher education participants in the two years following the release of the Green

Paper did not clearly articulate what were in many cases quite deep fundamental differences in perspective. This lack of clarity enabled John Dawkins to conflate a number of issues in his announcement of the charter project.

As noted above, the conflation of management prerogative and academic freedom was initiated by the Green Paper. But in addition, Dawkins referred to: the need to limit the requirements by the Commonwealth of institutions; a list of items where the institution should be free from government interference; the composition and accountability of governing bodies together with their capacity for self-management; challenges for institutional management; unfair misrepresentations of the Government's intentions; and the clarification of the distinct responsibilities of government and institutions. This grab-bag of issues was principally directed at deflecting criticisms from the Government and the Minister. The source of the criticisms was located, in an amorphous way, in the higher education institutions. The key task for a charter of academic freedom and institutional autonomy was therefore to obtain consensus on the relationship between Government and institutions.

John Dawkins' original intention was that the scope of the charter not extend to individuals' academic freedom, as demonstrated by his response in the negative to a question on whether it would afford protection to academics from infringements of their academic freedom at the hands of institutional management.² However, by the time the terms of reference were issued for the announced charter project, in December 1989, its purposes had been widened to:

examine options for protecting the right of academic freedom at the level of both the institution and the individual staff member. (Dawkins, 1989c)

The terms of reference for the project also had a much more intellectual flavour than might have been expected given its genesis:

Freedom to inquire, to speak and to publish is the essential ingredient of academic life that secures the advancement and transmission of knowledge and understanding.

But while the terms of reference for the charter project moved away from a narrow focus on management prerogative, they continued to treat the issues of academic freedom and institutional autonomy conjointly. While the two notions are closely related, they are not interchangeable nor does one imply the other.

It is possible for universities to have a substantial degree of autonomy and to use their autonomous power to restrict the freedom of their staff. In Australia over the past 40 years most of the instances of infringements or perceived infringements of individuals' academic freedom have been at the hands of institutions, not at the behest of

governments.³

More complicated is the issue of whether institutional autonomy is a necessary, but not sufficient, condition for academic freedom. At the extremes it is easy to determine: a university whose mission and the ways of achieving it are closely determined by government could not be said to provide academic freedom; conversely, academic freedom does not require that universities be completely free from any accountability to any external agency. Less clearly, a university could operate under a high degree of government regulation in terms of say, numbers of students, length of courses, disciplines to be offered, selection of staff and staff terms and conditions, but nevertheless leave considerable freedom for academics to determine the methods and content of teaching and research.

While the precise nature of control or regulation of a university by external agencies may vary widely, at least a sense of the institution being to a great extent self-governing would seem necessary to provide the context where academic freedom can be a meaningful concept in describing the work of academic staff.

The international context

Much of the Australian Government's and John Dawkins' consideration of a charter of autonomy and academic freedom seemed motivated by short term considerations of avoiding criticism, but they were in fact consonant with similar developments internationally. Issues of academic freedom have been associated with the restructuring of universities throughout the OECD. Similar patterns where governments have sought to align universities more closely to economic goals have emerged almost universally. These broad changes were alluded to in the OECD's 1987 document *Universities under Scrutiny* which surveyed the very similar developments in all OECD countries. It noted:

Whilst in most OECD countries universities retain a large measure of freedom from direct governmental intervention, their autonomy has been under pressure from demands for greater social and economic relevance, for evidence of effective use of scarce public resources, and for a clearer commitment to industrial success and professional competence. The proportion of resources over which academic governing bodies have complete discretion has tended to decline, even when total resources have increased. There is more earmarking, more targeting, more accountability. Thus existing legislation and statutes governing relations between State and university do not always adequately describe current patterns of operations. (OECD, 1987, p.91)

The form in which the reconsideration of academic freedom has taken place has varied. As also noted by the OECD:

The issue of tenure is in many countries at the forefront of arguments about relations between universities and the State. Its advocates stress academic freedom. (OECD, 1987, p.75)

So in Britain, for example, much of the concern about the effective abolition of tenure in the Education Reform Act of 1988 was couched in terms of its impact on academic freedom. The House of Lords successfully inserted an academic freedom amendment into the Education Reform Bill in the section dealing with tenure, although it has been suggested that this was only because 'there was no other appropriate place to put it' and that the Lords were motivated more by 'the threat to institutional autonomy posed by the Bill rather than its tenure clause'. (Cottrell, 1988)

The separation in Australia of debates about on the one hand academic freedom and on the other hand tenure can be accounted for by the distinctive and centralised way in which employment conditions are determined under the Australian Industrial Relations Commission. While academic freedom was a point of argument in relation to staff redundancy provisions, as discussed below, the question was largely resolved by the time the Government addressed academic freedom in the education policy context.

Despite the British example, and the extent to which staff issues have dominated the Australian discussion, there have been international manifestations of a wider crisis in academic freedom, involving a reassessment of the role of universities in society. They have been initiated by governments, representatives of universities as corporate entities, and by broader constituencies of university interests. The manifestations include the clause on academic freedom in the recent *Education Amendment Act 1990* in New Zealand; the promulgation of the 'Magna Charta' of university autonomy and academic freedom by Rectors of European universities meeting to celebrate the 900th anniversary of the University of Bologna in September 1988; and the adoption by the World University Service at its International General Assembly in 1988 of 'The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education'.

These examples demonstrate that the need for a restatement of the concept of academic freedom is widespread. The need seems to be for a commitment to academic freedom which is adequate to the new requirements which have been placed on universities, throughout the OECD. These requirements include that universities as centres of research play a leading role in creating new economic spheres, and that a greater proportion of the population than ever before receive high level university training.

History of the concept of academic freedom

Any restatement of academic freedom has to deal with the not inconsiderable intellectual baggage which surrounds the concept. The origins of academic freedom are variously traced back to ancient Greece, medieval bands of scholars, the Enlightenment, the triumph of Darwinism, the reforms of the Prussian university in the nineteenth century, or the formation of academic staff associations in the twentieth century.

One picture of the history of academic freedom sees it as dating from and essential to the emergence of the university in the twelfth century. Bands of scholars and masters established centres of learning and were able to secure their complete autonomy and freedom through the device of geographically relocating the entire academic community if necessary. This tradition of autonomy and freedom upheld by universities was in constant battle with the Church (the most notable casualty being Galileo). The Church was not finally defeated in its censorial influence until the nineteenth century. The unenlightened impulses of the Church have been supplanted by the narrow interests of commerce. Academic freedom has been motivated throughout by the desire to seek truth and expand the frontiers of knowledge.

A more detailed examination makes this continuous history of academic freedom problematic. The earliest European universities or proto-universities were able to escape unwanted intrusions into their affairs by decamping but this ceased to be a real option once the prestige of institutions became invested in their buildings (from at least the thirteenth century). The earliest universities were not free from external authority, but in some cases were able to secure a reasonable degree of autonomy by judiciously juggling episcopal, Papal, imperial and aristocratic authority (Cobban, 1975).

Furthermore, the earliest universities do not sit comfortably with an opposition between on the one hand academic freedom and the pursuit of disinterested knowledge, and on the other hand vocational training. The University of Bologna was created for 'the career interests of laymen studying Roman law' (Cobban, 1975, p.48). It was the rapid expansion of requirements for skilled notaries and clerks to deal with the increasing complexity of ecclesiastical, commercial and political life that led to the early expansion of university provision.

A close connection between thought and freedom is not self-evident. The concept of inquiry outside Church doctrine is essentially a modern one whose currency dates from the enlightenment. It would not have occurred to a scholar in the middle ages to break free of religion altogether, although breaks from the constraints of particular dogma were fruitful sources of scholarship. A notion akin

to academic freedom emerged at the end of the sixteenth century denoted by the phrase *libertas philosophandi*, but its hold on the universities was by no means secure (Hofstadter and Hetzger, 1955, p.59). It is not until the emergence in the nineteenth century of *Lehrfreiheit* as a principle central to the German university that it is possible to assert confidently a genuine continuity with current ideas of academic freedom.

Whatever the antecedents of the notion of academic freedom, the norms governing work in universities have been closely bound up with the dominant conceptions of the state of knowledge itself.

So, in the medieval period disputation was a key method of inquiry, with the ascendancy of scholasticism. Fundamental to the Enlightenment is the sense of emancipatory truths emerging in the face of the opposition of aristocratic and religious authority. German idealist philosophy encourages speculative thought. The failure of the religious opposition to Darwin's theory of evolution reflects both the triumph of scientific method and freedom of inquiry at the end of the nineteenth century, ideas which continue through to modernist concepts of science, technology and progress into the twentieth century.

This line of inquiry suggests that to the extent that there is widespread scepticism about the modernist project, groundings of academic freedom in a confidence in the progress of knowledge no longer have their previous force. Thus, a new environmental consciousness questions the ability of science and technology to create a better world; the Marxist promise of emancipation through scientific, historical materialism is overwhelmed by the end of history in the name of the universal victory of liberal democracy; or the elaboration of disciplinary specialisms becomes so detailed that it ceases to be possible to specify their connection with other branches of knowledge or even be sure that any connection exists.

Australian universities and their roles

However, the history of academic freedom cannot be restricted solely to an intellectual history. It is also an institutional history where the concept has practical resonances in the daily work of academics and in educational policy.

That begins with the colonial history of Australian universities. While Oxford and Cambridge are often cited as the icons of the developers of Australian universities, their emergence draws more on the Scottish and London examples than the relatively moribund training for clergymen which Oxford and Cambridge offered, especially before their reform in the latter half of the nineteenth century. There are also a number of parallels with universities in the United States of America.⁴

Universities did not arise in the colonies by the demand of students, or the presence of suitable teachers itching to lecture in their new surroundings. They were in fact created by figures of commercial and government life whose notion of a developed society required the presence of universities and who perceived a need for the local training of professionals and public functionaries.

Accordingly, universities were established with governing councils where the community interest in their formation could continue to guide their development. The notion of national (or, initially, colonial) needs was also inscribed at the centre of the purposes of these institutions. Professional and practical subjects, such as law, medicine, science and political economy, were part of the curriculum at the outset for most of the early Australian universities.

Indeed it is arguable that Sydney University's narrow curriculum was responsible for its precarious first twenty years - its first decade saw the awarding of only fifty-nine Bachelor of Arts degrees. University archivist David Macmillan noted:

Not until proper professional schools of Law, Medicine and Engineering were established after 1882, did Sydney come near to rivaling Melbourne as a university, in either student numbers or the range of subjects offered. (Macmillan, 1963, p.56)

As important as these origins of the 'older' universities is the emergence of the great majority of Australian universities over the past thirty years in response to the ever increasing demands for highly elaborated skills and knowledge in contemporary life. These universities responded to growing educational aspirations which reflected both greater sectors of the population seeking knowledge for its own sake, and a greater demand for university trained labour.

Whether old or new, Australian universities have located their goals in a mixture of civic, national and vocational purposes. These purposes need not be characterised as anti-intellectual or set up in opposition to the disinterested pursuit of knowledge. The civic role Australian universities have played since their earliest days has been as much about making available the civilising effects of knowledge as about more pragmatic goals of civic advancement. Vocation can be read as an intellectual calling - in for example, Weber's terms - as well as 'more' technical instruction. National purposes can be rendered in terms of a national commitment to truth seeking, perhaps never more so than in the Murray Committee's report which went as far as ascribing a commitment to truth to the nation itself:

No nation in its senses wishes to make itself prone to self delusion, or to deceit by other nations; and a good university is the best guarantee that mankind can have, that somebody, whatever the circumstances, will

continue to seek the truth and make it known. (Murray, 1957, p.11)

Any contemporary defence of academic freedom, therefore, which sought to place it in essential opposition to national, civic and vocational purposes would relegate it to the margins of the work of universities. A tactically stronger defence would take due account of the history and social context in which the term is used and would also be robust enough to warrant practical application to the daily work of learning and research undertaken in universities.

The role of staff associations

The practical elaboration of the concept of academic freedom in the twentieth century has in many cases been closely associated with the development of academic staff associations. Any account of the history of the American Association of University Professors would have to note the energy that organisation has put into academic freedom and the central importance of the '1925 Conference Statement on Academic Freedom and Tenure' and, in particular, the '1940 Statement on Principles of Academic Freedom and Tenure' adopted after a series of conferences of AAUP and the Association of American Colleges. Academic freedom continues to be a major priority of AAUP, whose mode of operation includes the imposition of censures on wayward institutions.

In Australia, the origins of the Federated Australian University Staff Association (FAUSA) are also intimately tied to defending academic freedom. The organisation was formed in 1964 out of the Federal Council of University Staff Associations of Australia amidst the perception that staff needed a more effectively united voice to protect academic freedom. The inaugural FAUSA President, Professor R H Thorp, noted that 'the continuous problem of academic freedom' must occupy FAUSA, and in that connection:

The case of S S Orr, which has concerned us so vitally in Australia, seen in perspective is an example of what can happen when professional associations are inadequate, as was then the case. (Thorp, 1964, p.73)

It is difficult to overstate the impact of the Orr Case on Australian academics. Without wishing to embark on yet another explanation of the case, in brief it concerned the dismissal of Professor Sydney Sparkes Orr from the University of Tasmania in 1956, following allegations that he had seduced a student. Complicating factors in the case included that the student was from a prominent local family (especially given Tasmania's close-knit society), that the University had in the previous year been subject to a damning Royal Commission which had been established in part on the basis of public criticisms of the administration of the

University by Professor Orr, and that Orr's philosophy teaching was accused by some of being dangerously libertarian. Orr took an action of wrongful dismissal against the University in the Supreme Court of Tasmania, but lost.

Staff associations were relatively slow to take up the case, and it was not until 1958 that the Federal Council of University Staff Associations of Australia (FAUSA's precursor) took the case up nationally. Following a major Committee of Inquiry the Federation concluded that the University of Tasmania 'has failed to observe academic due process and generally accepted standards of "natural justice"', and accordingly in December 1960 imposed a censure on the university (FCUSA, 1961, p.70).

This censure was not lifted until 1966, when FAUSA recognised that 'the University had adopted rules of tenure governing the tenure of office, suspension and dismissal of academic and other professional staff; these rules define the kinds of conduct for which a staff member can be suspended or dismissed and contain most adequate safeguards and procedures for the investigation of charges of misconduct brought against staff members' (FAUSA, 1966, pp 72-72).

Award provisions

One of the terms of settlement of the Orr case was that the University of Tasmania join with other Australian universities in 'adopting acceptable conditions of tenure and procedures for the investigation of serious charges of misconduct' (FAUSA, 1964, p.77). Remarkably, despite considerable efforts on the question of tenure and its relationship to academic freedom on the part of FAUSA, the promise of adequate tenure and misconduct provisions applying to all Australian universities was not fulfilled until November 1988 when serious misconduct procedures were included in the Australian Universities Academic Staff (Conditions of Employment) Award 1988.

FAUSA's registration as a union (in 1986) and the making of Federal awards concerning the conditions of employment of academic staff substantially changed the focus of FAUSA's protection of the academic freedom of staff. Industrial regulation provided the opportunity to make very clear and legally binding procedures on matters such as tenure and misconduct. The dismissal of staff is now substantially regulated by award provisions.

FAUSA's first response therefore to the Government's December 1989 proposal for a charter of academic freedom was to point out the way in which award provisions had impact on the rights and freedoms of academic staff. FAUSA also advised that 'rather than attempting to duplicate the intention of awards, the charter should be seen as complementary to them' (FAUSA, 1990a, p.2).

The key protection afforded academic staff

in 'Orr-type' cases of infringements of academic freedom are the 'procedures in respect of serious misconduct' which form clause 8 of the Australian Universities Academic Staff (Conditions of Employment) Award. These procedures, when followed, should provide adequate protection for staff against matters of opinion or belief being used as cause for dismissal ostensibly for serious misconduct.

The award affords protection both by virtue of the definitions of misconduct it contains, and the procedures for establishing a case of misconduct which it requires. The definitions refer to a 'serious impediment to the carrying out of the [staff] member's duties' and 'serious dereliction of the duties required'. Under the procedures the Award establishes, if the staff member denies an allegation of serious misconduct a committee must be formed to determine whether the facts alleged are proven and whether the facts as proven constitute serious misconduct. The committee comprises a nominee of the Chief Executive Officer (Vice-Chancellor), a nominee of the President of the local branch of the Union and an independent agreed chair who is to be 'a senior member of the legal profession or a person with appropriate experience in industrial relations' (Arbitration Commission, 1988).

While these provisions of the Award have already been used successfully to defend academic staff (although they have not been tested in cases where academic freedom has been at issue) their scope is limited. Informal accusations of misconduct can be made against staff and no doubt in some cases staff will capitulate to this type of pressure. However, the union can be fairly confident that once matters proceed far enough to be brought to the union's attention, a university would find it very difficult to improperly use the accusation of misconduct.

The conduct of academic staff, however, represents only one of the ways in which their individual academic freedom may be expressed. Another is their continuing employment and in this connection any diminution of tenure has been seen as a reduction in academic freedom.

In November 1989 redundancy provisions were added to the Australian Universities Academic Staff (Conditions of Employment) Award. These provisions allow for academic staff to be declared surplus and, in the final instance, retrenched. Before retrenchment can take place reasonable attempts must be made to find alternatives such as retraining, redeployment and early retirement. Consultation with the union and appeals procedures are also incorporated in the award. Grounds for declaring staff surplus include decreases in student demand, decisions to cease offering courses, and institutional financial exigency.

FAUSA argued against the introduction of redundancy provisions in the academic

staff award, in part on academic freedom grounds. These arguments were not successful in forestalling redundancy provisions *per se*, but FAUSA was able to secure an 'academic freedom' clause in the definition of grounds on which an academic may be declared surplus, as follows:

the following matters shall not be the basis for a position being surplus:

1. opinions held or expressed by an employee or his or her refusal to express any particular opinion;
2. matters relating to the methods of teaching and research used by an employee;
3. any matter properly dealt with as a case of serious misconduct or unsatisfactory performance.

As no staff in Australian higher education institutions have yet been declared surplus, the opportunity has not yet arisen to test the extent to which the academic freedom of staff is protected under these clauses of the Award.

The 4% second tier settlement under the national wage case included a number of matters agreed between the employers and the unions, most of which were incorporated into the Award. One matter which is in the agreement only is a set of dispute resolution procedures.

It was agreed that these procedures be adopted at each higher education institution, unless the institution and local Branch of the union agree to establish (or continue) different procedures. The agreement has binding force for both employers and union, although its absence from the Award means that rectifying non-compliance is more cumbersome than in the case of Award provisions.

The purpose of the dispute resolution procedures is to resolve disputes about decisions which adversely affect members of staff, or about which they are aggrieved. They involve the appointment of conciliators to whom staff may complain, procedures for conciliators to suggest ways disputes may be resolved, and provision for a report to be made to the Chief Executive Officer, the President of the local Branch of the Union and the Chair of the panel of conciliators who may propose further action to resolve the dispute.

The dispute resolution procedures explicitly preclude complaints on subjects of: decisions of the governing body, appointments, promotion, discrimination or equal opportunity procedures, sexual harassment, unsatisfactory performance or serious misconduct, or termination on grounds of ill-health.

It may be that those infringements of academic freedom which arise from conflict between members of staff may be able to be resolved effectively under these dispute resolution procedures. It would appear that some of the instances of what Brian Martin et al.

have termed 'intellectual suppression' could have been dealt with more fairly and expeditiously had convenient dispute resolution procedures existed and been used.

The positive values of academic freedom

While these various industrial awards and agreements have a substantial effect on the context in which the academic freedom of university staff in Australia is exercised, they say nothing about the positive values of academic freedom. In an attempt to articulate a positive case for academic freedom, and to make its expression as practical as possible, FAUSA made a second submission to the project to develop a charter of academic freedom, in August 1990.

At the core of FAUSA's second submission was a series of thirteen propositions about the work of universities which it was argued both entailed and defined academic freedom. It is worth quoting these propositions in full, as they give as good an indication as any other document of the union's current view of the practical scope of academic freedom.

(a) *the type of professional judgement involved in both selection of curriculum and in pedagogical method requires the constant exercise of expert judgements best carried out by the academic acting as an autonomous professional in conjunction with their peers;*

(b) *the freedom to determine approaches to particular subjects leads to greater diversity in provision, which enables universities collectively to cover greater areas of knowledge and to be responsive to necessary changes;*

(c) *given that academics in universities decide the nature of courses they will be in the best position to know what preparation students coming to a course will need in order to have a fair chance of success, and therefore they should be in a position to bring this information to bear on conditions for the admission of students;*

(d) *there is a danger that powerful social elites will seek to restrict the rewards of university participation to their own members, so admission and assessment of students should be in the hands of academics (with appropriate safeguards), because they do not have the same stake in power;*

(e) *the motivation of the academic workforce requires intrinsic rewards, most important of which is the exercise of autonomous professional judgement in the performance of their duties;*

(f) *universities are major sites for the performance of basic research, much of the best of which is serendipitous or curiosity driven;*

(g) it is not possible to predict areas of knowledge which will become major areas of social or commercial concern, but universities can develop expertise over a wide range of areas, some of which, at some stage, will become of major importance;

(h) a nation needs to protect its ability to move rapidly into areas of emerging importance and the wide pool of skills and expertise of academics are the bedrock of this capacity;

(i) the formulation and dissemination of opinions about various aspects of social life is constrained by the institutions in which they circulate. Mass media, public sector bureaucracies and the business world all have powerful pressures to orthodoxy (while being subject to periodic change). The institutional values of universities should support and encourage heterodoxy in order to assist necessary change in other spheres;

(j) major shifts in conceptions of knowledge are of their nature challenging to authority, and academics within universities need to be able to make such challenges;

(k) an international network of universities exists, as does an international system for the circulation of academics' work. These networks should operate freely, in order to promote academic interchange and to provide an international dimension to the process of generation, dissemination and interrogation of knowledge. An open network of this sort is of particular importance to small countries such as Australia;

(l) the development of knowledge within a particular disciplinary (or inter-disciplinary) area of inquiry proceeds according to its own, particular logic. Academic practitioners with a high level of expertise in a particular area of inquiry need to be in a position to make decisions about how research should be furthered and to be able to act on those decisions;

(m) the greatest number of both students and academic staff should be given the opportunity to participate in the most up to date, cutting edge, of particular areas of inquiry. If the opportunity is not provided then the development of such areas of inquiry will very rapidly become out-of-date, devaluing teaching and research in the area and, once the momentum is lost, making retrieval of the relevant expertise cumbersome and expensive. (FAUSA, 1990b)

Very little of the public debate on the Government's proposed charter of academic freedom and institutional autonomy has concerned itself with specifications or justifications of academic freedom as it does and should operate in universities. Argument has mainly concentrated on whether changes to funding legislation could provide effective guarantees of academic freedom, however defined. The Charter project did not even

attract a written submission from the Australian Vice-Chancellors' Committee.

Arising as it did from publicly expressed concerns about the relationship between universities and Government, the charter proposal provided a major opportunity to further debate on limits to accountability and to re-state the benefits of autonomy, freedom and diversity in academic work. The practically oriented propositions quoted above were FAUSA's attempt to further this debate, in a way which would be comprehensible both to national policy makers and to individual academic staff.

FAUSA's submission proposed that the Government give effect to its support for academic freedom by issuing a Ministerial Statement in which the propositions quoted above were addressed. In addition to the Ministerial Statement, FAUSA called for the Employment, Education and Training Act 1988 to be amended to add to the functions of the Higher Education Council that it be required to inquire into 'measures aimed at preserving and enhancing academic freedom in higher education institutions in Australia'.

Conclusion

At the time of writing (October 1990) the Government has not announced its response to the project to draft a charter of academic freedom and institutional autonomy. However, it seems likely that there will be no changes made to the legislation governing either higher education funding or the functions of the advisory bodies. More likely to survive is the notion of a Ministerial statement on academic freedom and institutional autonomy, which may or may not be associated with a wider policy pronouncement.

The core of the charter as originally proposed was to be changes to higher education funding legislation to ensure that

the strings attached to Commonwealth funds cannot be used to corrupt the integrity of institutions in the conduct of their affairs. (Dawkins, 1989b)

It appears that Australian academics have decided such legislation to protect academic freedom is either unwarranted or too difficult to draft. In a discussion paper on the academic freedom charter FAUSA proposed that in approving educational profiles the Minister have 'due regard to the need to promote academic freedom', and that institutions be required to have 'adequate measures to protect academic freedom' in order to receive Commonwealth funds (FAUSA, 1990b). But when FAUSA made its final submission to the project to develop a charter of academic freedom it proposed these changes to the Higher Education Funding Act not be enacted, and instead that the Higher Education Council consider pursuing the legislative changes after they had amassed some experience of the exercise of

academic freedom.

The broad indifference to legislation to give specific protection to academic freedom cannot be accounted for just by Vice-Chancellors' hostility to any perceived incursion on management prerogative. Part of the reason is also acceptance of the argument that any statement of freedom implicitly constrains those matters not mentioned - the same argument used by conservative opponents of an Australian Bill of Rights. But more important is the sense that no legislative change could address the essence of academic freedom.

For as long as the essence of academic freedom remains mysterious it allows various aspects of the social role of universities and academics to be obscured. While the establishment and public funding of Australian universities has always been justified in terms of their civic and national purposes, a certain vision of academic freedom would cavil at these goals. Even the recommendations of the Murray Committee, widely regarded both contemporaneously and in retrospect as providing one of the most important boosts to the universities throughout their history, were criticised on the grounds that they would result in unwarranted government intrusion into academic affairs. Such an eminent figure in the history of academic freedom in Australia as Sydney University's Professor John Anderson deplored the Murray Committee's talk of planning and co-ordination in the national interest (Baker, 1979, p.137).

When 'academic freedom' is deployed as an unspecified ethos, taken to infuse universities but unable to be detailed in its practical effects, it also serves to obscure the structures of power of academic institutions and which determine and constrain academic work. The operation of particular academic traditions, the norms governing method and fields of inquiry, and the technologies for the assessment and certification of academic performance all shape the reality of the exercise of academic freedom. For many academics, especially those on the margins of disciplines or lower on the respective status ladders, the freedom to choose an area of research or teaching is much less a feature of their working lives than their struggle to attract research funding or to persuade their colleagues of the value of less mainstream courses of study.

Academic freedom remains a rhetorical device which in specific circumstances can be deployed to some effect. But it is such a loosely defined device that the politics of its deployment cannot be foreseen, and depend entirely on the vagaries of the circumstances in which it is used. The failure to attempt to give academic freedom legislative form, assuming that this is the eventual outcome of the Government's charter proposal, is a missed opportunity to give the concept somewhat greater purchase in shaping the

definition of the social role of universities. It remains to be seen whether a Ministerial statement will go any way to serving this purpose.

REFERENCES

- Australian Conciliation and Arbitration Commission, 1988, *Australian Universities Academic Staff (Conditions of Employment) Award 1988*.
- Australian Vice-Chancellors' Committee, 1988, *Excellence and Efficiency: The Vice-Chancellors' Response to the Green Paper*, Canberra, 6 April 1988.
- Baker, A J, 1979, *Anderson's Social Philosophy*, Angus and Robertson.
- Cobban, A B, 1975, *The Medieval Universities*, Methuen.
- Cottrell, Paul, 1988, *Individual Academic Freedom and the Education Reform Act 1988*, paper to the Conference of the Society for Research Into Higher Education, University of Surrey, December 1988.
- Dawkins, the Hon J S, 1987 *Higher Education, a policy discussion paper* (the Green Paper), AGPS, Canberra.
- 1988, *Higher Education, a policy statement*, (the White Paper) AGPS, Canberra.
- 1989a, Speech by the Minister for Employment, Education and Training, to the Australasian Institute of Tertiary Administrators, New Zealand, 25 August 1989.
- 1989b, Speech by the Minister for Employment, Education and Training, to the Melbourne Centre for the Study of Higher Education spring lecture series, Melbourne, October.

—1989c, Terms of reference for the project to develop a charter of academic freedom, institutional autonomy and related responsibilities: correspondence from the Minister for Employment, Education and Training, to the Federation of Australian University Staff Associations, 21 December 1989.

FAUSA, 1964, 'The Orr Case - Terms of Settlement', *Vestes*, Vol 7, No 1.

—1966, 'The Federation of Australian University Staff Associations, The University of Tasmania, and Professor S S Orr', *Vestes*, Vol 9, No 2.

—1990a, *Preliminary Submission to the Committee to Develop an Academic Freedom Charter*, unpublished submission, April 1990.

—1990b, *Academic Freedom for the 1990s and Beyond - A Discussion Paper*.

FAUSA/FCA, 1988, *Thinking Ahead: Planning Growth in Australian Higher Education*, Federation of Australian University Staff Associations and Federated Council of Academics, Melbourne, June, 1988.

FCUSA, 1961 'Censure of the administration of the University of Tasmania', *Vestes*, Vol 4, No 1.

Hofstadter, R, and Metzger, W P, 1955, *The Development of Academic Freedom in the United States*, New York.

Macmillan, D S, 1963, 'The University of Sydney - The Pattern and the Public Reaction, 1850-1870' in *The Australian University*, Vol 1, No 1.

Martin et al, eds, 1986 *Intellectual Suppression, Australian Case Histories, Analysis and Responses*, Angus and Robertson, Sydney.

Murray, Keith A H, Chair, 1957, *Report of the*

Committee on Australian Universities, Commonwealth of Australia, Canberra.

OECD, 1987, *Universities under Scrutiny*, Organisation for Economic Co-operation and Development, Paris.

Thorp, R H, 1964, in *Vestes*, Volume 7, No 1.

NOTES

1. Reversionary tenure (called 'flexible hierarchies' in the Green Paper) was proposed as a system where tenured appointments would be up to the senior lecturer level, with the right to hold a position at a higher level being subject to periodic contractual review. Those not deemed worthy to retain the higher position would revert to their senior lecturer job.
2. Response by the Minister for Employment, Education and Training, (Dawkins, 1989b) to a question from the author at the University of Melbourne, Centre for the Study of Higher Education spring lecture series.
3. For a catalogue of such instances see Martin et al, 1986. FAUSA holds information on other cases in its files.
4. No Australian university took a single overseas model and replicated it. Contemporary debates made explicit reference to various overseas models. For the older universities (Sydney, Melbourne, Adelaide, Tasmania, Queensland and Western Australia) relevant examples include Scottish and Irish universities, London, Manchester, Toronto and Wisconsin. More interesting is the question of parallels in structure and function which arose unwittingly. David Macmillan (1963) suggests Sydney's resemblance to U.S. models "was not a conscious imitation, but the result of colonial conditions".